



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes

For the tenants – CNR, CNC, MNDC, OLC

For the landlord – OPR, MNR, MNDC, FF, OPC

### Introduction

This decision deals with four applications for dispute resolution, one brought by the tenant and three brought by the landlord. The first three files were heard together. The tenant seek to cancel the 10 day Notice for unpaid rent, to cancel the One Month Notice for cause, she seeks an Order for the landlord to comply with the *Residential Tenancy Act*, Regulations or tenancy agreement and seeks a Monetary Order for money owed or compensation for damage or loss under the *Act*, Regulations or tenancy agreement. The landlord seeks an Order of Possession, a Monetary Order to recover unpaid rent, a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord also seeks to recover the filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenant amended her original application and the landlord filed three other applications.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. A substantial amount of documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the Act?
- Is the landlord entitled to an Order of possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on September 01, 2010. This is a fixed term tenancy which is due to expire on August 31, 2011. Rent for this unit is \$1,000.00 per month and is due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$500.00 and a key deposit of \$50.00 on August 13, 2010. A Move in condition inspection was completed by the tenant after the landlord failed to do this and a copy of the report was given to the landlord who has signed to agree to the condition of the rental unit.

The landlord testifies that he served the tenant with the first 10 Day Notice to End Tenancy for unpaid rent on November 02, 2010 as the tenant had failed to pay her rent for November, 2010. No effective date was given on this Notice and the tenants name had been spelt incorrectly. The tenant paid the outstanding rent on November 24, 2010 and a receipt was given to her for use and occupancy only.

The tenant disputes this Notice as her name was incorrectly spelt. The tenant argues that a legal notice must show the correct name of the tenant and as the landlord has failed to do this the Notice is therefore void and should be cancelled.

The landlord served the tenant with another 10 Day Notice to End Tenancy dated January 02, 2011 in person as the tenant failed to pay all her rent for January, 2011. This Notice states the tenant has five days to pay the outstanding rent, or apply to cancel the notice or the tenancy will end on January 12, 2011. The landlord testifies that the tenant paid \$520.00 towards her rent on January 04, 2011 which was accepted for use and occupancy only which left an outstanding balance of \$480.00. The landlord seeks to have this Notice upheld and an Order of Possession to take effect as soon as possible. The landlord also seeks a Monetary Order to recover the unpaid rent.

The tenant testifies that she disputed the second 10 Day Notice when she filed her amended application. She states she was given advice by an information Officer at the Residential Tenancy Branch (RTB) that she could withhold this amount of rent due to a problem with bedbugs which resulted in her having to throw out her bed and purchase a new one. The tenant states this was a reasonable cost for the replacement of her bed as the landlord had not dealt with the issue of bedbugs in her unit and her bed became infested. The tenant seeks to cancel this Notice as she states she was entitled to withhold this portion of rent due to emergency repairs because of the bedbugs.

The tenant testifies that she viewed the rental unit prior to moving in and found its condition to be unsatisfactory. The landlords' agent at that time promised the tenant that all repairs, cleaning and painting would be completed before her tenancy commenced on September 01, 2010. The tenant states when she moved into the unit on that day she found that no work had been done in the unit. The tenant states she contacted the landlords' agent about this promised work and was told to speak to the landlord. She states she went to the landlords' office but he refused to speak with her.

The tenant testifies she asked the landlord to complete a move in condition inspection but he failed to complete this with her at the start of her tenancy and she completed it on her own and documented the alleged appalling condition of the unit. The tenant states she presented this report to the landlord and he has signed it to agree to the condition of her unit and his leasing administer made a copy of the report. The tenant states she sent a letter to the landlord on September 16, 2010 about the work required to her unit and then spent 49 hours cleaning the unit from September through October, 2010 and spent 78.50 hours making repairs, doing

preparation for painting and then painting the unit. The tenant states she sought advice from 'Trac' concerning the hourly rate for this work and was told normal cleaning costs would be billed at \$90.00 per hour and painters would charge \$90.00 to \$100.00 per hour. The tenant seeks to recover cleaning costs off \$30.00 per hour and painting costs of \$25.00 an hour to a total sum of **\$3,432.50**. The tenant has provided receipts for cleaning materials and painting supplies and paint to a total sum of **\$158.46**.

The tenant testifies that she had to wash the walls several times, scrub the hardwood floors then polish and wax them, every surface was cleaned with bleach as there was mould growing on all surfaces and larva growing in the kitchen cupboards. The tenant testifies she spoke to the landlord about compensating her for this work and was told he would have to speak to his lawyer first. The tenant states she did not take photographs of the unit before she started the work as she thought the landlord would compensate her. The tenant has provided a section of filthy wallpaper used to line a kitchen cupboard and has provided the inspection report which shows the condition of the unit as described by the tenant and signed by both parties.

The tenant states she was unable to use the bathroom in her unit due to damage in the room. On October 08, 2010 she states the landlord arrived with his painter to paint the bathroom and repair the damaged ceiling. This painter spent half a day on the bathroom and did some work in the bedroom. The tenant states she was told he would be back the following Tuesday but he did not return. When she contacted the landlord he told her the painter was called away to a personal emergency but when the tenant called the painter herself he told her the landlord had sent him to paint another of the landlords' properties. The tenant states she was without the use of her shower for nine days and then had to finish the work herself.

The tenant testifies that she has suffered from a lack of hot water in her unit. She also states that the heat is included in her rent however the heat has not been constant and no heat comes through the registers. The tenant claims she has had to use her oven for heat. She states at the first hearing that there has been a slight improvement in the heat but it is still not at the required 74 degrees.

The tenant states the door knobs were missing for her bedroom, bathroom and hall closet doors and she was told that her front door would be replaced. The tenant states the electrical sockets

had all the covers missing and live wires were exposed. She has had to put these back together herself.

The tenant states that she discovered from other tenants in September, 2010 that there was an infestation of bedbugs in the building. She states she approached the landlord about this issue and claims he said he know nothing about it. The tenant states the landlord did not post a Notice informing current or new tenants about this problem and he did not post a notice in the building providing a contact person for emergency repairs. The tenant testifies that her private and professional life have been affected by the ongoing stress of living in this unit and she has suffered a loss of income due to this. The tenant testifies that the landlord has not maintained the property or her unit and no upgrades have been completed in the building for many years.

The tenant asked her witness JD to give testimony. The witness testifies that he was a property manager working for the landlord from November 25, 2010 to the middle of January, 2011. This witness states when he took over as property manager his unit he moved into was terrible, it was dirty, there was trash everywhere and there was furniture left behind. He states he spent three days cleaning his unit and did not receive any compensation from the landlord for this work. The witness states that working for the landlord was not good. Materials for repairs were not available and his requests for repairs were disregarded by the management. He states that in January, 2011 there was water running down some tenants walls and the landlord refused to allow him to make repairs as he said his budget had been taken up for that month. He states the water went into the fire alarm system and a company came out to disconnect the system but would not come back to reconnect it as the landlord had not paid his bill.

The witness testifies that he was present when the pest control company came to spray the tenants unit and another unit but states they did not remove the baseboards or sockets and they did not spray the adjacent units or the ones above and below the tenants. The witness testifies that he has been a property manager for many years and this building is in a bad condition he states the landlord violated tenants' rights by entering units without proper Notice.

The landlord cross examines this witness and asked when he started with the company and what work he did, what repairs he did to the tenants unit, plus other questions which are not relevant and have been disregarded. The witness replies that he did start prior to his contract

being signed on December 03, 2010; he replies that the landlord gave him a plumber on one occasion and the landlord did give him a torch and copper elbows and window winders to make a repair. The witness also stated that there were two treatments for bedbugs in one unit and he did put up some weather stripping and door knobs in the tenants unit when the landlord asked him to.

The tenant calls her second witness (RQ) who is a friend who visited her at her unit. The witness testifies that he visited the tenant about a month after she moved in and was surprised at the condition of her unit, the unit was still very dirty and the kitchen was a mess with the stove and fridge still very dirty. The unit was cold and he remembers there were missing door knobs in the kitchen and bedroom door. He states the tenant was still painting the unit at that time. He states the tenant told him there was a bedbug problem in the building and that she had had to throw out her bed, box spring, bedding and clothing because of the bedbug infestation. He states he did not think the unit was inhabitable even after one month of the tenant cleaning and painting.

The landlord cross examines this witness and asks when he visited the tenant, was she still working on the unit, what was wrong with the unit. The witness replies he could not remember what month he visited her, he states she was working on the unit but stepped when he visited but all the paint and tools were evident. The unit was ugly, smelly and dirty, the floor in the hall had not been taken care of and the paint on the walls that had not been repainted was old.

The tenant calls her third witness (MD). The witness testifies that she has visited the tenant at her unit several times since the start of her tenancy the condition of the unit was horrific, there was mould on the walls that was like slime that ran down the walls, the kitchen was old and decrepit, the fridge was filthy. The witness states the tenant worked on the unit everyday for one and half months. She states the tenant washed the walls, scrapped the floor with steel wool and had to paint. The witness states, that in her opinion, the unit is a health hazard. She also states the elevators do not work and are unsafe and the building is generally uncared for. The witness also testifies that she saw some bedbugs in the tenants unit and was at the unit when they fumigated. She states she saw bites on the tenants' legs from the bedbugs and the landlord did not do anything about them for at least two months. The witness states the tenant ended up in hospital with exhaustion and her health went downhill since moving into the unit. The witness

states she understood the tenant had a verbal agreement with the ex- property manager that the unit would be repaired before she moved in.

The landlord declines to cross exam this witness.

The landlord called his witness (RG) who is administrative assistant at the building. The witness states that when complaints come in they take care of them and when the tenant complained about bedbugs she was the one who booked the appointment with the pest control company. The witness states on February 03, 2011 the tenant came in and said she still had bedbugs and she arranged another appointment for February 17 but the tenant wanted to reschedule that appointment. The witness states a letter was sent to the tenant on February 14, 2011 to notify her they would be entering her suite on February 17, 2011 for pest control. The witness states on February 17, they entered the tenants unit, however the tenant was not at home but she had left a cat in the unit so the pest control company could not do their work.

The witness testifies that the heat is set at the same temperature for all units and no other tenants have complained. The witness states the previous tenants did clean the unit when they left. She states at one time the tenant came to the office and started screaming at the landlord and the police were called who removed the tenant. She states the tenant is hostile towards the landlord and has harassed other tenants.

The tenant cross examines this witness and asks her if she was aware of the bedbug infestation in the building and has the landlord ever posted a public notice to this effect, she asks if she received a letter from the tenant on January 01, 2011 about the continuing problem with bedbugs, did the landlord have verbal or written permission to enter the tenants unit on February 17. The witness replies that she was aware of bedbugs in the building and they have had five complaints in the last two years. She states she never goes into the building so would not know if the landlord posted a notice and states she only received a letter from the tenant on February 01 about bedbugs. The witness states the tenant was given Notice to enter her unit on February 17, 2011.

The tenant has provided some frozen bedbugs she testifies were caught in her unit in evidence. The tenant testifies the landlord did not take immediate action after she informed him she had

bedbugs in her unit on October 05, 2010 and the pest control company did not spray the adjacent units to prevent re-infestation.

The tenant testifies that the landlord has breached s. 32 of the *Act* and did not provide a rental unit in a state fit for habitation. The tenant states the landlord has not provided any evidence to show that the previous tenant cleaned the unit or that the landlord returned their security deposit despite the landlords' testimony that this occurred. The tenant seeks an Order for the landlord to comply with the *Act* by ensuring her unit is maintained in accordance with the *Act*.

The tenant seeks a Monetary award for harassment from the landlord because she feels the landlord has harassed her by giving her Notices to end her tenancy, that he has broken promises to her about repairs to her unit, has lied to her and has been confrontational towards her. The tenant also seeks compensation for the loss of peace and quiet enjoyment of her unit. She states she had to wait almost eight weeks to get the unit sprayed for bedbugs and three months for a repair man to do the bathroom ceiling which was never completed by him. She states she has lost the use of her water, heat and elevator service on different occasions and the landlord is now requesting the tenant pay a \$45.00 charge for garbage removal. The tenant states she has suffered stress, her health has suffered, and she has been in hospital for exhaustion and has lost a lot of weight due to the living conditions she has had to endure. She states she is now experiencing an African moth infestation in her unit.

The tenant seeks to recover the sum of **\$5,000.00** for this which includes \$1,100.00 for the bedding, sheets, clothing and furniture she has had to get rid of due to the bedbugs. The tenant questions the landlords' credibility due to inconsistencies in his testimony concerning the Move in inspection report and his testimony about the previous tenants cleaning the unit before they left.

The landlord disputes the tenants' claims. He states the tenant carried out the work in her unit before notifying the landlord. The landlord first denies receiving the move in condition inspection report however when the tenant produces this for the reconvened hearing he states he did sign this report. The landlord testifies that the tenant had to be removed from his office by the police when she became aggressive towards him and his staff. The landlord testifies that a unit of this size would only take about eight hours to paint and disputes the hours the tenant has claimed it



took her to paint her unit. The landlord also disputes the time the tenant states it took her to clean her unit.

The landlord testifies that the tenant called a City inspector to check her heat and it was tested at 19.8 degrees. He states it should have been 20 degrees so the inspector allowed it. The landlord testifies that the previous tenants had the unit professionally cleaned at the end of their tenancy but he has failed to provide a copy of their move out report showing this. The landlord testifies that the tenant has not requested any repairs in writing and denies receiving letters from the tenant to do so with the exception of three letters received on September 30, November 01 and one on an unknown date. The landlord testifies that in a letter sent by the tenant dated September, 16, 2010 the tenant has claimed for work up to September 27, 2010 and September 29, 2010.

The tenant testifies that she wrote the letter on September 16, 2010 and then added additional hours and dates for cleaning and painting. This is the letter sent to the landlord on September 30, 2010.

The landlord testifies that he served the tenant with a One Month Notice to End tenancy for cause dated December 08, 2010. The landlord testifies that the tenant has been harassing other tenants and has acted aggressively towards him. The landlord testifies that when his administrative assistant was showing the building to prospective tenants they encountered this tenant in the elevator and she told the prospective tenants that he was a bad landlord. The landlord also testifies that he has received complaints from other tenants who have stated that this tenant is harassing them.

The tenant states when she was in the elevator with the landlords assistant and some other people she only asked his assistant when she was going to post a Notice about the bedbugs. She testifies that at no time did she harass her or the other people. The tenant states she did hold a meeting in her unit for other tenants to notify them of their rights and to discuss issues with bedbugs in the building. At no time did she harass these tenants and one of the tenants has provided a letter in evidence who states she has not been harassed by the tenant.

The landlord testifies that the tenant informed him of bedbugs in November, 2010 not October as she claimed. The landlord testifies that the pest control company sprayed the tenants unit on December 16 and December 30, 2010 and the adjoining units were also sprayed.. When the tenant informed him that she still had a problem in February, 2011 he arranged another pest control company to come and spray her unit and left a notice on the tenants' door to inform her they would be entering her unit on February 17, 2011. The landlord testifies that the tenants unit has also been sprayed again last week.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. With regard to the first 10 Day Notice to End Tenancy served on November 02, 2010. A legal Notice must show the correct name of the person the notice is intended for. As the tenants name was incorrectly spelt this 10 Day Notice is therefore invalid and is cancelled.

With regard to the second 10 day Notice to End Tenancy served on January 02, 2011; I refer both parties to s. 26(1) of the *Act* which states:

### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant argues that she was given advice that the sum she deducted from her rent was a reasonable cost for the replacement of her bed as the landlord had not dealt with the issue of bedbugs in her unit and her bed became infested. The tenant refers to s. 33 of the *Act* which deals with the issue of emergency repairs. However this section of the *Act* deems an emergency repair to be repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

It is therefore my decision that although bedbugs are an irritant and may cause a skin reaction in some humans they are not a health risk and do not fall under the meaning of emergency repairs. Consequently, the tenant should not have withheld a portion of her rent for January, 2011 to replace her bed and in doing so she has breached s. 26 of the *Act*. Therefore, the tenants' application to cancel the 10 Day Notice to End Tenancy is dismissed without leave to reapply.

As the 10 Day Notice is upheld the landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the tenants claim for an Order for the landlord to comply with the *Act*; As the tenancy will end I am not prepared to issue an Order in this matter and this section of the tenants claim is dismissed.

With regard to the tenants claim for a Monetary Order for money owed or compensation for damage or loss due to the condition of the unit; I have reviewed all the evidence presented in connection with this section of the tenants claim. It is my decision that the unit was in a state of disrepair and unclean at the start of the tenancy and I find the tenants evidence and that of her witnesses to be more plausible that the tenant was promised by the landlords building manager at that time that the unit would be fit for occupation by September 01, 2010.

The tenants' evidence shows that the unit was not fit for occupation on September 01, 2010 and it is my decision that the landlord should have known this and the responsibility for the unit lies with the landlord. Consequently, I find the tenant has established that the unit was in a dirty

condition which required some repair work, cleaning and painting and as such I find she is entitled to some compensation from the landlord for this work. The tenant has applied for the sum of **\$158.46** for painting and cleaning supplies and I find this to be a reasonable amount considering the amount of work she had to complete pursuant to s. 67 of the *Act*. However, I find the sum of \$3,432.50 claimed for the hours spent cleaning and painting a one bedroom unit to be excessive and therefore I reduce the tenants claim to **\$2,432.50** for this work pursuant to s. 67 of the *Act*.

With regard to the tenants claim for \$5,000.00 for harassment, a loss of quiet enjoyment and compensation for the loss of bedding, sheets, clothing and furniture. The tenant argues that due to the landlord actions and inactions concerning the repairs to her unit, the loss of heat, water and elevator service and due to his behaviour in failing to deal with these matters in a timely manner she has suffered a loss of quiet enjoyment as a result of this. However the tenant has provided no evidence from her doctor or the hospital concerns the effect this has had on her health; the tenant has provided no receipts for new bedding, sheets, clothing or furniture showing her loss. The report from the pest control company also shows the tenant did not vacuum her bed or box spring prior to their visit. A tenant must show how she has mitigated her loss and verification of the actual amount required to compensate her for any loss when she makes a claim for compensation and in this matter I am not satisfied that the tenant has meet the burden of proof.

Therefore this section of the tenants' application is dismissed without leave to reapply.

However with regard to the issue with the bedbugs I am not satisfied from the landlords own testimony or that of his witness that he did not receive the tenants letter concerning the bedbugs in October, 2010 as the landlord has contradicted his own evidence concerning receipt of documents from the tenant this therefore does bring his credibility into question concerning his testimony about the receipt of all the tenants letters. Therefore, I find the landlord did receive the tenants' letter concerning bedbugs in October, 2010 and failed to take action to eradicate them until December, 2010. Consequently, it is my decision that the tenant is entitled to compensation for the loss of quiet enjoyment of her rental unit due to the landlords' failure to arrange for the pest control company to come and spray her unit until December 16, 2010 and find the tenant is entitled to compensation of \$200.00 per month for October and November and \$100.00 for December, 2010 pursuant to s. 67 of the *Act*.

With regard to the landlords claim for money owed or compensation for damage or loss; the landlord has only applied to recover the unpaid rent and has suffered no damage or loss that requires compensation. Therefore, this section of the landlords claim is dismissed.

With regard to the landlords claim for unpaid rent; as the landlord has been successful in the matter of the unpaid rent and the tenant has agreed this rent was withheld it is my decision that the landlord is entitled to recover the sum of **\$480.00** from the tenant pursuant to s. 67 of the Act. I have offset this amount from the tenants' monetary award.

With regard to the landlords third application dealing with the One Month Notice to End Tenancy; as the landlord has been given an Order of Possession for unpaid rent this Notice will have no effect and there is no reason to hold another hearing to deal with this matter. It is therefore my decision that this application by the landlord is dismissed without leave to reapply. In the same note the tenants' application to cancel this One Month Notice is also dismissed without leave to reapply.

With regard to the landlords request to recover the filing fee; as the landlord has been partially successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant and this will be offset against the tenants monetary award.

A Monetary Order has been issued to the tenant for the following amount:

Paint and cleaning supplies	\$158.46
Compensation for bedbugs	\$500.00
<b>Subtotal</b>	<b>\$3,090.96</b>
Less unpaid rent	(-\$480.00)
Less filing fee	(-\$50.00)
<b>Total amount due to the tenant</b>	<b>\$2,560.96</b>

### Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy dated November 02, 2010 is upheld and the Notice is cancelled.

The tenants application to cancel the 10 Day Notice dated January 02, 2011 is dismissed. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the landlord's monetary claim for **\$480.00**. This sum has been offset against the tenants' monetary award.

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,560.96**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

The remainder of the landlords' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 11, 2011.

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Residential Tenancy Branch